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2004 MAY 19 TELEPHONE 8  
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May 19, 2004

Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Pkwy  
Nashville, TN 37243-0505

*Via Hand Delivery*


Re Petition of On-Site Systems, Inc To Amend Its Certificate of Convenience and  
Necessity  
Docket No 03-00329

Petition of Tennessee Wastewater Systems, Inc To Amend Its Certificate of  
Convenience and Necessity  
Docket No 04-00045

Dear Chairman Tate

I have enclosed the original and fourteen copies of a Motion to Dismiss East Sevier County Utility District as an Intervenor in this consolidated matter. Please return the extra copy of the Motion to me stamped filed. A status conference on this consolidated matter is scheduled for tomorrow, Thursday, May 20, 2004 before Randal Gilliam, hearing officer. I would appreciate your seeing he gets a copy of this Motion prior to the status conference. Thank you for your assistance in this matter.

Sincerely yours,



DONALD L. SCHOLES

Enclosures

c Charles Pickney, Jr  
Mark Jendrek  
Charles B. Welch, Jr  
G. Scott Thomas

BKSJ File No 04-189

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**PETITION OF ON-SITE SYSTEMS, INC. TO  
AMEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY**

**Docket No. 03-00329**

**and**

**PETITION OF TENNESSEE WASTEWATER  
SYSTEMS, INC. TO AMEND ITS  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY**

**Docket No. 04-00045**

**MOTION TO DISMISS EAST SEVIER COUNTY UTILITY DISTRICT AS AN  
INTERVENOR**

The Authority has granted the Petition of East Sevier County Utility District to intervene in Docket No. 03-00329 and Docket No. 04-00045. Tennessee Wastewater Systems, Inc. (the Company) moves that the Authority dismiss East Sevier County Utility District (the District) as an intervenor in this case because the District is not a validly created utility district under T.C.A. § 7-82-101 *et seq.*; therefore, it has no right to assert any interest in this pending proceeding. The Company is filing this motion prior to the status conference so that hearing officer and the parties will be aware of this issue prior to status conference. The Company has not had an opportunity to fully research this issue and requests an opportunity to more fully address this issue in accordance with any directives given by the hearing officer.

East Sevier County Utility District is a utility district created pursuant to T.C.A. § 7-82-101 *et seq.* A copy of the District's Order of Creation on file with the Tennessee Secretary of State's Office is attached to this Motion as Exhibit 1. According to T.C.A. § 7-82-202(a)(2), the order entered by a county mayor (formerly county executive) creating a utility district must comply with the following:

the county executive shall enter an order so finding, approving the creation of the district, designating it as "the \_\_\_\_\_ Utility District of \_\_\_\_\_ County, Tennessee," defining its territorial limits, *stating the service or services which the district shall be authorized to furnish*, and appointing as commissioners of the district those persons nominated in the petition, of whom one (1) shall be appointed for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years.

The order entered on June 7, 1973 by the County Judge of Sevier County which created the East Sevier County Utility District does *not* state the service or services the District was authorized to furnish as required by T.C.A. § 7-82-202(a)(2). The order only provides that the public convenience and necessity requires the creation of the District, establishes its boundaries and appoints the original board of commissioners. When a municipal corporation fails to follow statutory requirements for its creation, the creation of the municipal corporation is void. *Woodbury v. Brown*, 101 Tenn. 707, 50 S.W. 743 (1899). The District is a municipal corporation. T.C.A. § 7-82-301.

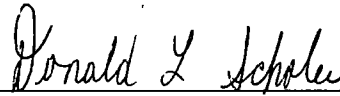
Prior to an amendment to T.C.A. § 7-82-202 in 1968, an order creating a utility district was not required to state the services the utility district was authorized to provide. In 1968 the legislature enacted Public Chapter 529 of the 1968 Tennessee Public Acts which established this requirement. This same act amended T.C.A. § 7-82-302 which now provides that utility districts created after July 1, 1967 shall be empowered to "furnish only those services stated in the order

creating the district.” Utility districts created prior to July 1, 1967, can only provide the utility services they were providing on that date. If a utility district desires to provide additional utility services, a supplemental petition must be filed with the county mayor requesting such authority.

The order creating East Sevier County Utility District failed to comply with a statutory requirement set forth by T.C.A. § 7-82-202(a)(2). Therefore, the District has not been validly created. The Company asserts this noncompliance renders the District’s creation void. The Company asserts that the District should not be permitted to participate in this pending proceeding when it has not been validly created as required by statute. Since the District’s creation is void, it has no legal rights which can be affected in this proceeding. The District’s intervention should be dismissed.

Dated this 19th day of May, 2004.

Respectfully submitted,



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DONALD L. SCHOLES, # 10102  
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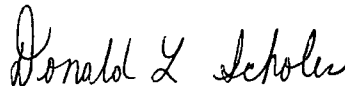
### CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing Motion has been served upon the following persons on this 19<sup>th</sup> day of May, 2004 by U.S. Mail, postage prepaid, and by fax:

Mark Jendrek  
Mark Jendrek P.C.  
Post Office Box 549  
Knoxville, TN 37901

Charles B. Welch, Jr.  
Farris, Matthews, Branan, Bobango & Hellen, PLC  
618 Church Street, Suite 300  
Nashville, TN 37219

G. Scott Thomas  
Bass, Berry & Sims, PLC  
AmSouth Center  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238

  
\_\_\_\_\_  
DONALD L. SCHOLES

635 D328

# State of Tennessee



## Department of State

I, JOE C. CARR, Secretary of State of the State of Tennessee, do hereby certify that the annexed is a true and correct copy of the Order extending the EAST SEVIER COUNTY UTILITY DISTRICT OF SEVIER COUNTY, TENNESSEE which was duly recorded in this office on 6th day of March, 1974 in Utility District Corporation Record Book Volume 1.

EXHIBIT

1

STATE OF TENNESSEE

COUNTY OF SEVIER

June \_\_\_\_\_, 1973

IN THE COUNTY COURT OF SEVIER COUNTY,  
TENNESSEE,

CORRECTED DECREE

IN RE: EAST SEVIER COUNTY UTILITY  
DISTRICT OF SEVIER COUNTY, TENNESSEE

This cause came on to be heard on this the 18th day of May, 1973, having been and continued from May 17, 1973, by the Court, before the Honorable Ray L. Reagan, County Judge of Sevier County, Tennessee, upon the petition hereinabove filed in connection with the incorporation of a utility district under the provisions of 1937 Public Acts of Tennessee, as amended, known as "The Utility District Act of 1937" as amended and set forth in Tennessee Code Annotated Sections 6-2601--6-2636. Upon evidence duly given it is found, ordered, adjudged and decreed by this Court as follows:

1. That the petition filed on April 27, 1973, with this Court requesting the incorporation of a utility district to be designated as "The East Sevier County Utility District of Sevier County, Tennessee", conforms to all of the requirements of the Utility District Act of 1937, as amended, and set forth in Tennessee Code Annotated Section 6-2601--6-2636, both as to form and content and is signed by the requisite number of the owners of real property who reside within the boundaries of said proposed district, and that the sworn statement by the person who circulated said petition accompanying same conforms to all of the requirements of said law; and

2. That notice of the time, place and purpose of this public hearing upon the convenience and necessity of the incorporation of said district has been given in conformity with the Utility District Act of 1937, as amended, as set forth in Tennessee Code Annotated Sections 6-2601--6-2636, by publication of a notice not more than fifteen days nor less than ~~ten~~ days prior to the date of said hearing, such notice having been published on May 3 and May 10, 1973, in the Sevier County News Record, a newspaper of general circulation in the proposed district, and

3. That a hearing has been held by this Court pursuant to the notice hereinbefore mentioned, and from the evidence presented this Court finds:

- (a) That the public conveniences and necessity requires the creation of East Sevier County Utility District of Sevier County, Tennessee; and
- (b) That the creation of said district is economically sound and desirable; and

4. That the prayer in said petition shall be and is granted and the creation of the East Sevier County Utility District of Sevier County, Tennessee, with all rights granted in Tennessee Code Annotated Sections 6-2601--6-2636, is hereby approved and consummated, and the territorial limits of said district so created shall be in accordance with Exhibit "A" hereto attached.

5. That the persons nominated in said petition for Commissioners of said proposed utility district, namely; Robert B. Smith, III, Clint Huff and Jim Bush are hereby appointed as Commissioners for said utility district with terms of office beginning on the date of the entry of this decree and extending as follows:

Robert B. Smith, III - for a term of four years from and after his appointment,



Clint Huff - for a term of three years from and after his appointment, and

Jim Bush - for a term of two years from and after his appointment, and

6. That a certified copy of this Order and Corrected Decree shall be filed with the Clerk of this Court as provided by law; and

7. That all of the cost incident to this cause shall be borne by the persons filing said petition for which execution may issue.

ENTERED, this the 7 day of June, 1973.

Ray L. Reagan  
Ray L. Reagan, County Judge  
Sevier County, Tennessee

John B. ...

STATE OF TENNESSEE  
COUNTY OF SEVIER

I, Paul Atchley Clerk of the County Court of said County, do hereby certify that the foregoing is a True & Perfect copy of the corrected decree In Re; East Sevier County Utility district of Sevier County, Tennessee.

as the same appears of record in my office.  
Witness my hand and Official Seal in Sevierville, this 15th day of

June 19 73

Paul Atchley Clerk